IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE Nos 48 and 49 of 1999
with
TAX APPEAL Nos 5, 6, 7, 8 and 11 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THE GUJARAT STATE CO.OP. BANK-LTD.

Versus

THE COMMISSIONER OF INCOME TAX

Appearance:

1. Income Tax Reference No. 48 fo 1999
MR KH KAJI for Petitioner
MR MIHIR JOSHI i/b MR MR BHATT for Respondent
MR JP SHAH, MR NR DIVATIA AND MR SN SOPARKAR FOR INTERVERNERS

2. Tax Appeal No. 5 of 1999
MR MIHIR JOSHI i/b MR MR BHATT for Petitioner
MR KH KAJI for Respondent

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE M.S.SHAH

Date of decision: 29/11/2000

CAV JUDGEMENT (Per M.S. Shah, J)

Reference No. 48 of 1999 under Section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), at the instance of the assessee, arises from the judgment dated 3.12.1997 of the Income Tax Appellate Tribunal, Ahmedabad Bench (hereinafter referred to as "the Tribunal") in Appeal Nos. 3796, 3797, 4482, 4483, 4810 and 4311/Ahd/95 for the Assessment Years 1988-89, and 1990-91 to 1994-95. Tax Reference No. 49 of 1999 is made at the instance of the Revenue in respect of the rectification order dated 24.9.1998 in Misc. Application No. 26/Ahd/98. Tax Appeals are filed by the Revenue under Section 260-A of the Act against the orders dated 6.10.1998 passed by the Tribunal in Misc. Application No. 27/Ahd/98 and cognate applications of the assessee for rectification of the aforesaid judgment of the Tribunal. In view of the fact that the questions referred to this Court and the questions raised in the Tax Appeals are inter connected and involve interpretation of the same statutory provision viz. Section 80P(2)(a)(i) of the Act, with the consent of the learned counsel for the parties, the tax references and the appeals were heard together and are being disposed of by this common judgment.

2. In Tax Reference No. 48 of 1999, the following questions have been referred by the Tribunal :-

"(i) Whether the Tribunal was right in law in holding that interest income earned from short term deposits with nationalized banks out of its reserve funds was not entitled to exemption u/s. 80P(2)(a)(i), in view of the decision of the Supreme Court in 218 ITR 438 ?

(ii) Whether the Tribunal was right in law in holding that the provision of Madhya Pradesh Cooperative Societies Act was substantially in pari materia with the Gujarat Cooperative Societies Act with regard to utilization of reserve funds and, therefore, income from investment of such reserve funds did not fall within the scope of Section 80P(2)(a)(i) ?

(iii) Whether the Tribunal was right in law in holding that the locker rent is not

entitled to exemption u/s. 80P(2)(a)(i)?"

3. In Tax Reference No. 49/99 at the instance of the revenue, the following question has been referred :-

"Whether, the Appellate Tribunal ought not to have appreciated that deduction under section 80-P(2)(a)(i) is allowable for those profits only which are earned by carrying on the business of banking or providing credit facilities to its members when in the instant case the assessee had earned income utilizing building fund, dividend equalization fund, investment reserve, depreciation reserve and other reserves which cannot be treated as normal banking activity ?"

4. Since the entire controversy in both these proceedings revolves round the question whether earnings by the Bank from the aforesaid activities are deductible under the provisions of Section 80P of the Act, the relevant portion of Section 80P is set out hereunder :-

"(1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely :-

(a) in the case of a co-operative society engaged in -

(i) Carrying on the business of banking or providing credit facilities to its members

... ...

the whole of the amount of profits and gains of business attributable to any one or more of such activities."

5. Mr JP Shah, Mr NR Divetia and Mr SN Soparkar, learned counsel sought our leave to intervene at the hearing of these proceedings as their respective clients have a number of proceedings before the Income Tax Appellate Tribunal or before the Appellate Authorities under the Act wherein similar questions about deductibility of interest earned by Co-operative Banks on deposits from out of reserve funds are pending for consideration. We are also informed that the aggregate of the tax demands involved in all such proceedings amounts to a few hundred crores of rupees and that, therefore, also the learned counsel requested for permission to intervene at the hearing of these proceedings before this Court, although none of the assessees on whose behalf they sought to intervene have any proceedings pending before this Court. Having heard the learned counsel for the assessee and the learned counsel for the revenue at whose instance the present tax references and the tax appeals are filed, we have permitted the above named learned counsel to intervene at the hearing of these proceedings. All the learned counsel have been heard at length on all the questions being answered by this judgment.

6. The facts leading to filing of the Tax References and the Tax Appeals, briefly stated, are as under :-

6.1 The Gujarat State Cooperative Bank Ltd. (hereinafter referred to as "the Bank"), an apex Cooperative Bank is carrying on business of banking. It is rendering services in the nature of bankers' bank. In the course of its activities -

(i) the Bank having surplus funds including the funds in the various reserves invests the same in short term deposits with various scheduled banks and earns interest from such investments.

(ii) the Bank also has lockers in the bank premises for benefit of its customers who come to the bank for banking purposes and the locker rent is earned by the bank by renting the lockers to the customers.

(iii) the Bank also earns commission income from its customers while issuing bank drafts, and levies collection charges for collecting the amounts of cheques on behalf of its customers or commission for issuing bank guarantees.

6.2 The assessments for A.Ys. 1989-89 to 1994-95

were originally completed on the footing that the interest income was deductible under Section 80P as income from banking business. However, the assessments were reopened by the Income Tax authorities relying on the judgment of Madhya Pradesh High Court in M.P. State Co-Op. bank Ltd. 119 ITR 327(MP), which held that the income from investment of reserves in certain deposits was not deductible as it was not income from banking business, and was taxable.

In re-assessment proceedings, relying on the aforesaid judgment of Madhya Pradesh High Court, the Assessing Officer held that the income by way of interest from investment of reserves was not deductible. He also held as not deductible income by way of locker rent as also commission income. He further held that the income earned by way of dividend from investment in shares of public sector Corporations primarily IFCI was falling within the scope of Section 80P(2)(d) and was, therefore, not deductible under Section 80P(2)(a)(i).

6.3 In appeals, the CIT(A) held by his order dated 29.6.1995 that the judgment of the Madhya Pradesh High Court was not applicable because the provisions of the Madhya Pradesh Cooperative Societies Act were different from the provisions of Gujarat Cooperative Societies Act under which the reserves are permitted to be used for the business of the Bank and were, therefore, part of working capital/stock in trade of the Bank. The CIT (A) also held that the income by way of locker rent as well as commission income fell within the scope of banking business deductible under Section 80P(2)(a)(i). The CIT(A) remanded the issue regarding the dividend income as to whether it was covered by sub-clause (d) or sub-clause (a).

6.4 The Department preferred appeals to the Tribunal. By its judgment dated 3.12.1997, the Tribunal held as follows, while partly allowing the appeals of the revenue:-

(i) Interest income earned on deployment of funds out of reserve funds with banks other than Co-operative banks is not deductible under section 80P(2)(a)(i). The Tribunal, however, upheld the alternative contentions of the assessee that if the said income is taxable, then proportionate expenses incidental to the said investment would be allowable and the Assessing Officer was directed to decide this aspect after hearing the assessee.

(ii) The income by way of locker rent was held as not falling within income from banking business, following the judgment of Madhya Pradesh High Court in Bhopal Co-operative Central Bank vs. CIT, 169 ITR 573(MP).

(iii) The issue whether income by way of commission was deductible as income from banking business was remanded to the Assessing Officer to examine the facts and decide the point.

(iv) The remand by CIT(A) on the issue of dividend income was confirmed.

6.5 Thereafter, an application for rectification for AY 1991-92 (No. 26/A/98) was preferred by the assessee Bank as it was not clarified nor decided whether the order of the Tribunal applied only with respect to statutory reserves required to be created under the Gujarat Co-operative Societies Act or it applied to all other reserves as well which were voluntary and which could be brought back in the profit and loss account. The Tribunal allowed the application for rectification and by judgment dated 24.9.1998 held that it had not decided this aspect and hence the rectification application was maintainable and consequently held that the judgment of the Tribunal was only in relation to statutory reserves. The clarification was given on the ground that the Supreme Court decision in M.P. Co-Op. Bank Case (218 ITR 438) pertained to only statutory reserves.

Similar rectification applications filed by the assessee Bank for the other years were disposed of by the Tribunal on 6.10.1998 by observing that the order dated 24.9.1998 in M.A. No. 26/A/98 was applicable to other cognate rectification applications as well.

6.6 Against the aforesaid judgment dated 3.12.1997 of the Tribunal, Reference No. 48/99 has been made to this Court at the instance of the assessee and against the judgment dated 24.9.1998 in Rectification Application No. 26/A/98, Tax Reference No. 49 of 1999 is made at the instance of the revenue. Although the Revenue had also prayed for referring questions regarding power of the Tribunal to pass rectification orders under Section 254(2) those questions were not referred.

6.7 Since the provisions of Section 260A of the Act came into force w.e.f. 1.10.1998, against the orders

dated 6.10.1998 of the Tribunal in the other rectification applications, the Revenue has filed the Tax Appeals in which the following questions have been raised as substantial questions of law :-

"(1) Whether, the Appellate Tribunal is right in law and on fact in entertaining and allowing application filed under section 254 of the Act which tantamount to reviewing its earlier decision ?

(2) Whether, the order dtd. 6/10/1998 can be said to be a rectification order under section 254 of the Act, when there was no mistake apparent from the face of the record ?

(3) Whether, the Appellate Tribunal ought not to have appreciated that deduction under section 80-P(2)(a)(i) is allowable for those profits only which are earned by carrying on the business of banking or providing credit facilities to its members when in the instant case the assessee had earned income utilizing building fund, dividend equalization fund, investment reserve, depreciation reserve and other reserves which cannot be treated as normal banking activity ?"

7. Since earlier, while disposing of reference application for A.Y. 1991-92, questions in relation to Section 254(2) were not referred and since the issues are interconnected, the learned Standing Counsel for the Revenue agreed that since question No. 3 is otherwise also required to be decided while deciding the questions referred to this Court in the two Tax References, it is not necessary for the Court to give its decision on question Nos. 1 and 2 raised in the Tax Appeals. Hence out of the questions raised in the Tax Appeals, only question No. 3 is required to be decided by this Court.

TAX DEDUCTIBILITY OF INTEREST ON DEPOSITS / INVESTMENTS OF RESERVES

8. Question Nos. (i) and (ii) in Tax Reference No. 48/99, the question referred in Tax Reference No. 49/99 and question No. 3 in the tax appeals are all interconnected and are, therefore, being discussed jointly and not separately. Before narrating the contentions raised and the submissions made on behalf of various assessees and the Revenue, looking to the nature of the controversy, we have perused the relevant provisions of the Madhya Pradesh Co-operative Societies Act (M.P. Act), Rajasthan Co-operative Societies Act, Maharashtra Co-operative Societies Act and Karanataka Co-operative Societies Act and Gujarat Co-operative Societies Act (Gujrat Act). However, the provisions of only the M.P. Act and the Gujarat Act & Rules are set out.

Statutory provisions of the Cooperative Societies Act- Madhya Pradesh ACt and the Gujarat Act

9. Madhya Pradesh Co-op. Societies Act.

"43. Funds and Projects - (1) No parts of the funds of a society other than the net profits shall be paid by way of bonus or dividend or otherwise distributed among its members.

(2) A society shall, out of its net profits in any year -

(a) transfer an amount not being less than twenty-five per cent of such profits to the reserve funds unless such society has been by general or special order, partially or wholly exempted in this behalf the Registrar, and

(b) & (c) ... ...

(3) to (5) ... ...

43. Subject to the provisions of sub-sections (2) and (3), a society may invest or deposit its funds :-

(a) in Government Savings Bank or in a Co-operative Bank; or

(b) to (d) ... .

(e) with any bank approved for this purpose

by the Registrar and on such terms and conditions, if any, as may be laid down by him in this behalf.

(2) The Reserve Fund of a society shall be invested or utilized only in such manner and on such terms and conditions as may be laid down by Registrar in this behalf.

(3) No investment of any of its funds in immovable property other than funds created for specified purposes, shall be made by a society other than a housing society without the approval of the Registrar.

(4) A society accepting deposits shall maintain, as a cover against such deposits, fluid resources to such extent and in such manner as may be specified by the Registrar from time to time.

10. M.P. Government's Instructions No. CR 25/26, dated October 7, 1960 which, in so far as it concerns apex banks, read as under :-

(C) Apex Bank :

The reserve fund of the apex bank shall be fully invested outside its business in the Government securities. No part of its reserve fund should be utilized as its working capital.

3. All investments of reserve fund shall be specially marked as 'Reserve fund investment' and shall be shown separately in the annual balance-sheets. The reserve fund deposits at every level shall carry the maximum rate of interest which a Central Bank or apex bank pays on fixed deposits for longest period or three per cent, whichever is higher. No part of the reserve fund deposits shall be drawn without the previous sanction of the Registrar, in the case of apex bank, Central Banks and large-sized societies and in the case of other primary societies without the permission of the Deputy Registrars. Such approval can be given when the amount is either required to meet losses, or, when the society is to be wound up. These eventualities will, however, be very rare."

11. Gujarat Co-operative Societies Act, 1961

2(24). "Working capital" means funds at the disposal of a society inclusive of paid up share capital, funds built out of profits, and money raised by borrowing and by other means.

67. Reserve fund.- (1) Every society which does, or can, derive a profit from its transactions, shall maintain a reserve fund.

(2) Atleast one-fourth of the net profits of the society each year, shall be carried to the reserve fund; and such reserve fund may be used in the business of the society or may, subject to the provisions of section 71, be invested, as the State Government may be general or special order direct, or may, with the previous sanction of the State Government, be used in part for some public purpose likely to promote the objects of this Act, or for some such purpose of the State, or of local interest:

Provided that if the Registrar is satisfied that financial condition of the society is such that it is unable to carry to its reserve fund an amount upto the aforesaid limit of one-fourth of its net profits, he may by order in writing for such period as he may specify in the order, fix for the society a limit lower than the aforesaid limit but not lower than one-tenth of its net profits.

(3) Where the reserve fund of a society exceeds its authorized share capital, then, notwithstanding anything contained in sub-section (1), the society may, with the previous permission of the Registrar carry to its reserve fund each year an amount which may be less than one-fourth but not less than one-tenth of its net profits.

71. Investments of funds .- (1) A society may invest, or deposit its funds, -

(a) in a Central Bank, or the State Co-operative Bank,
(b) in the State Bank of India,
(c) in the Postal Savings Bank,

(d) in any of the securities specified in section 20 of the Indian Trusts Act, 1882 (II of 1882),

(e) in shares, or security bonds, or debentures, issued by any other society with limited liability, or

(f) in any co-operative bank or in any banking company approved for this purpose by the Registrar, and on such conditions as the Registrar may from time to time impose.

(g) in any other mode permitted by the rules, or by general or special order of the State Government.

(2) Notwithstanding anything contained in sub-section (1), the Registrar may, with the approval of the State Co-operative Council, order a society or a class of societies to invest any funds in a particular manner, or may impose conditions regarding the mode of investment of such funds.

12. The relevant Rules from the Gujarat Co-Op.

Societies Rules read as under :-

Rule 29. Investment of Funds .- (1) With the previous sanction of the Registrar any society may invest the fund or a portion thereof -

(a) xxx

(b) in loans raised by a local authority in the State under the authority of the Local Authorities Loans Act, 1914 (IX of 1914)

(c) in the purchase or leasing of land or buildings, and in the construction of buildings;

Provided that the purchase of such land or the construction of such building is likely to be advantageous to the society in the conduct of its business.

(2) Notwithstanding anything contained in sub-rule (1), an urban co-operative bank -

(a) which has a paid up share capital of not

less than Rs.50,000, and a reserve fund of not less than Rs.50,000.

(b) which has completed ten years from the date of its registration, and

(c) which is classed A or B at the last audit made under section 84, may invest its surplus funds in such shares or debentures of any company registered under the Companies Act, 1956 as may be approved by the Registrar.

Rule 30. Restrictions on investment.-(1) The investment under rule 29 shall not at any time exceed 5 per cent of the deposit liabilities or 15 per cent of the surplus fund of the bank whichever is less.

(2) The investment in shares or debentures under rule 29 shall not exceed -

(a) in the case of preference shares. 10 per cent

(b) in case of ordinary share 5 per cent

(c) in the case of debentures 15 per cent

of the total surplus funds;

Provided that no investment shall be made under this sub-rule if it is likely to affect the ordinary business of the bank.

Explanation - For the purpose of this sub-rule "fund" shall mean such portion of the funds as are available for advancing loans to members but not so advanced.

13. Reference to certain notifications under Section 71(2) of the Gujarat Act is made at an appropriate place as there is some controversy about their applicability.

14. Summary

State Law	Where can the funds be invested	Ref.

M.P.	Only outside the business read with instructions of the Govt.	Sec.44(2)
	Withdrawal only after Govt. permission and that Instruction too under certain specified circumstances only	
Rajasthan	(Unless permission is obtained), there is prohibition against investing reserve fund in the business.	Rule 55(2)
	Once funds are separa- tely invested, cannot be withdrawn without sanction of Registrar which will be given only for certain purposes	Rule 55(3)
Mahrashtra	Reserve fund may be used : (1) in the business, or (2) invested otherwise	Sec.66(2)
	Investment may be as per : Rule 54 (1) Sec.70 of the Act or, (2) Rule 54(1) of the Rules	Sec.70
	Once invested, funds cannot be utilised without permission of the Registrar	Rule 54(2)
Gujarat	Reserve fund may be used : (1) in the business or, (2) invested otherwise	Sec.67(2)
	Investment may be made as per Rule 29 (1) Sec.71 of the Act or (2) Rule 29 of the Rules	Sec.71

15.0 CONTENTIONS URGED ON BEHALF OF CO-OP. BANKS

The contentions raised by the learned counsel for the assesses, are as under :-

15.1 The restrictive provisions of section 44 of the M.P. Act and more importantly the notification issued by the Registrar on 7.10.1960 categorically state in the first para that the reserve fund shall be fully invested outside its business. Secondly, it states that no part of the reserve fund should be utilized as its working capital. Subsequent paragraphs of the notification state that such reserve fund invested in deposits shall not be withdrawn without previous sanction of the Registrar which can be given when the amount is required to meet losses or when the society is to be wound up. In other words, under the M.P. Act, the statutory reserve was taken out of the banking business or working capital of the bank and it could only be used for twin objectives mentioned in the notification.

Contrasted with this, the Gujarat Act under section 67 unequivocally permits the use of statutory reserve in the business of the society or investment. There is, therefore, fundamental difference between the M.P. Act and the Gujarat Act regarding treatment of statutory reserve funds. It may be further noted that the restrictions under the M.P. Act by virtue of the notification of the Registrar apply only to apex bank and not to other cooperative banks.

15.2 The Supreme Court judgment in the case of Madhya Pradesh Co-op. Bank Ltd. 218 ITR 438 is clearly based on the prohibitions and restrictions contained in the M.P. Act with regard to the use of the reserve funds. The judgment accepts the proposition and so did the Revenue in that case that normal part of the banking business of the bank is to make investments in short term deposits and other easily realizable securities out of the surplus funds till they are required by it for lending or for other purposes. The Supreme Court judgment confirms and accepts the law laid down in Bihar State Co-operative Bank, 39 ITR 114 (SC) reiterated in CIT vs. Bombay State Co-operative Bank Ltd., 70 ITR 86 (SC).

The Supreme Court decision was rendered not in the context of reserves simpliciter nor in the context of permissive use of such reserve in the banking business without any limits u/s. 67 of the Gujarat Act but was

rendered on the special facts of the case, viz. the dual restrictions and prohibitions imposed by the Madhya Pradesh Registrar's Notification regarding utilization of the statutory reserve.

15.3 The submission that the Supreme Court judgment cannot apply to reserves simpliciter under the Gujarat Act is amply supported by the subsequent decision of the Supreme Court in the case of Bangalore District Co-op. Bank, 233 ITR 283 where the facts before the Supreme Court were very similar. This judgment should have been otherwise, if the earlier judgment in M.P. Bank's case can be said to have laid down the law that investments of all reserves would take the moneys out of circulating capital and significantly the later judgment of the Supreme Court distinguishes the earlier judgment by observing that it was rendered on the facts of that case. It is, therefore, submitted that investment of reserve funds in short term deposits, because the funds are temporarily surplus with the bank, cannot possibly take those funds out of the banking business of the applicant and such short term deposits continue to remain part of business funds of the bank.

15.4 In Bihar State Co-operative Bank Ltd. vs. Commissioner of Income Tax, (1960) 39 ITR 114 (SC), the Supreme Court has clearly laid down the principle that the investment of surplus funds in short term deposits till the moneys are required by the bank does not take the funds out of its business and the income was exempt. This was the position inspite of comparatively restrictive nature of exemption contained in the notification issued u/s. 60 of the Income Tax Act, 1922. The judgment goes on to say that such short term deposits are the normal activities of the bank as part of its banking operations as surplus moneys cannot be kept idle or unremunerative and as prudent Managers, they would be entitled to earn income by way of interest on short term deposits or government securities which are easily realizable securities at a minimum notice if funds are required. This judgment was reaffirmed by the Supreme Court in the judgment reported in Bombay state Co-op. Bank Ltd., 70 ITR 86.

15.5 In Addl. Commissioner of Income-tax vs. Ahmedabad District Co-op. Bank Ltd. (1975) 101 ITR 733, the Gujarat High Court unequivocally has come to the conclusion that investment of surplus funds of the bank in government securities and even in municipal debentures were in the course of banking business. The laying out by a bank of its surplus and idle funds in easily

realizable securities or deposits may be with twin objectives, viz. to encash them readily in case of need and not to lose interest by keeping them idle. Merely because they are securities or deposits payable at a certain specified period or that there was no variation in them would not convert them into investments pure and simple.

15.6 Once it is accepted that investment of surplus funds continued to retain such investments in the banking business, the mere fact that surplus funds are put in reserves whether statutory (as required by section 67 of the Gujarat Act) or non-statutory funds does not prevent them from being part of the business funds of the bank.

The link between the investment and the reserve fund can only exist in cases of mandatory and restrictive clauses as in the M.P. case but never in case of reserves which are free and which constitute part of the funds available to carry on business of the bank and the short term deposits cannot, under any circumstances, be classified as investments pure and simple outside the banking business - where investments are made in the course of banking business in easily realizable securities because funds are temporarily surplus.

15.7 Money has no earmark and, therefore, it cannot be possibly pointed out by the bank or anyone where a particular reserve stands invested. All the funds of the bank including share capital, reserves and unappropriated profits constitute a single fund which is represented by various investments made by the bank including short term investments in fixed deposits, moneys lent to borrowers, moneys invested as per directions of RBI and it can never be said that because of the clear language of section 67 in the Gujarat Act permitting the use of such funds in the banking business that by mere investment of the surplus in short term deposits takes them out of business funds.

15.8 Not only section 67 of the Gujarat Act permits the use of the statutory reserves in the business of the society but the definition of working capital contained in the Gujarat Act includes reserve funds in it. Thus, positively under the Gujarat Act reserve fund constitutes working capital of the bank and is part of the banking funds available for banking business and its investment in short term deposits which are easily realizable securities does not take them out from the business funds. In other words, they continue to be circulating capital or stock in trade of the bank.

15.9 Rajasthan High Court judgment in CIT vs. Rajasthan State Co-op. Bank, 223 ITR 55 follows the Supreme Court judgment in M.P. Bank's case because similar restrictions and prohibitions existed under the Rajasthan Act with regard to utilization of the statutory reserves. There is a demarcating line between investments from reserves on utilization of which there are prohibitions and restrictions e.g. by M.P. Act and the Rajasthan Act on the one hand and investments of free reserves which continue to be part of the business funds of the bank and are without any restrictions or prohibitions as is shown in the case of Maharashtra Act, Gujarat Act and Karnataka Act on the other hand.

15.10 The definition of banking in Sec.5(b) of the Banking Regulation Act, 1949 includes "acceptance for the purpose of lending or investment of deposits". Thus, at least, investment of the nature envisaged by way of short term deposits is also part of the banking business and the funds so invested continue to be circulating capital.

15.11 The aforesaid submissions gain considerable support because of the wide language used in section 80P as contrasted with restrictive language used in the notifications under 1922 Act or section 14 of the 1922 Act or section 81 of the 1961 Act. It is enough to claim exemption that the income is "attributable to" banking business. It need not be part of profits from banking business. If such income is attributable to the carrying on of banking business then it falls within the exemption clause. The wide range of the expression "attributable to" by the Supreme Court in its judgment in the case of Cambay Electric Supply, 113 ITR 84 and Vellore Electric, 227 ITR 557 and by the judgment of the Madras High in 148 ITR 196, show that it includes all ancillary, incidental, connected activities.

15.12 It is, therefore, submitted that on the aforesaid legal position it cannot possibly be contended by the Revenue that (i) the provisions of the M.P. Act and the Gujarat Act are similar as regards utilization of reserves; (ii) creation of reserves simpliciter as appropriation of profits take such moneys outside banking business in absence of restriction against using the same into banking business in view of the ratio laid down by the Supreme Court in the case of Bihar State Co-op. Bank (Supra) and the Bombay State Co-op. Bank Ltd. (Supra) and Bangalore District Co-op. Bank (Supra).

16.0 SUBMISSIONS OF BEHALF OF REVENUE

On the other hand, Mr Mihir Joshi, learned counsel instructed by Mr MR Bhatt, appearing for the Revenue has made the following submissions :-

16.1 The purpose of the exemption is obviously to encourage employment of as much capital as possible for financing and extending the scope of cooperation and not for enabling banks to earn tax free income by investments. The interpretation as canvassed by the assessees would be contrary to the legislative intent and clearly counter-productive.

16.2 The true test for applying the deduction u/s. 80P is whether the income earned is attributable to the utilization of circulating capital of the cooperative society, engaged in the activity of the business of banking, which in every case must depend on the attendant facts and circumstances, which in the instant case are as under :-

I Admittedly the investments in question are made out of funds -

(i) lying surplus, beyond the requirement of CRR, SLR and minimum involvement of NABARD,

(ii) not required for lending or repayment

II The investments are made as authorized under bye-laws which permit investment only of surplus funds as understood under the Cooperative Act to mean funds not required for banking business.

III Admittedly, the investments are attributable to reserve funds specifically earmarked as such and appropriated from the profits earned and shown as investments in the assessee's balance sheet clearly underlining the intention to exclude the same from its circulating capital.

16.3 A harmonious interpretation of the statutory scheme of Section 80P clearly establishes that the entire income of a Cooperative Society engaged in the business of banking is not exempt; exemption is only in respect of banking activity (a narrower term as compared to the

wider expression "the business of banking").

16.4 If the assessee's contention - that investment of funds is part of the banking business as defined under Section 5(b) of the Banking Regulation Act and, therefore, all income from all such investments is exempt under Section 80P of the Act - were to be accepted, it could be simply stretched to submit that money is the stock in trade of banks and, therefore, utilization of money in any manner is utilization of circulating capital and income earned therefrom is entitled to exemption under Section 80P of the Act.

In fact, in the context of the Banking Regulation Act, 1949 it does appear that the investment of circulating capital considered to be attributable to the banking activity properly so called, would have to be restricted to amounts attributable to CRR and SLR prescribed for the very purpose under the said Act or to amounts required to be reserved as per the NABARD guidelines.

16.A In rejoinder Mr Kaji has raised a preliminary contention which is adverted to hereinafter.

DISCUSSION

PRELIMINARY CONTENTION

17. At the outset, we would like to deal with the preliminary contention raised on behalf of the assessees that the arguments canvassed on behalf of the Revenue go beyond the scope of the reference and raise new questions which go beyond the questions referred to this Court. It is contended that since the Tribunal has held against the assessee only on the ground that the provisions of the M.P. Act and the Gujarat Act are similar and, therefore, the judgment of the Hon'ble Supreme Court in M.P. Co-op. Bank Ltd. vs. Addl. CIT (218 ITR 438) applies, the only question which this Court is required to decide in these proceedings is whether the Tribunal was right in law in holding that the provisions of the two Acts are similar. It is, therefore, submitted that if this Court were to hold that the provisions of the Act and the circulars under the two Acts are similar, the assessee would lose but if this Court were to hold that the provisions of the two Acts and the circulars issued thereunder are different, then this Court must hold that the decision of the Apex Court in M.P. Co-operative Bank Ltd. (supra) would not apply to the Co-operative Banks in Gujarat and thus answer question Nos. (i) and (ii) in

the tax reference No. 48/1999 as framed by the Tribunal in favour of the assessee and against the Revenue. It is submitted that the Revenue had not argued before the Tribunal that even if the provisions of the two Acts were different, the interest earned by the Bank on short term deposits out of the reserve funds of the Bank would not be deductible under Section 80P because such reserve funds were not a part of the circulating capital. It is submitted that the Revenue not having taken up such a contention and the Tribunal not having decided this issue, this Court cannot permit the Revenue to raise such a question in these proceedings. In support of the said contention, the learned counsel for the assessees have placed strong reliance on the decisions of the Apex Court in 37 ITR 11, 42 ITR 589, 74 ITR 67, 76 ITR 7, 39 ITR 540 and on the following parameters laid down by the Apex Court in 42 ITR 589 :-

"(1) When a question is raised before the Tribunal and is dealt with by it, it is clearly one arising out of its order.

(2) When a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be deemed to have been dealt with by it, and is, therefore, one arising out of its order.

(3) When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be a question arising out of its order.

(4) When a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise on the finding given by it."

It is submitted that in view of principle No. 4 laid down by the Apex Court in the aforesaid decision in 42 ITR 589, the Revenue cannot be permitted to raise the contentions which are now sought to be raised beyond comparison of the two Acts.

18.0 On the other hand, Mr Mihir Joshi, learned counsel for the Revenue has sought to repel the aforesaid contentions by making the following submissions :-

18.1 It has been the consistent stand of the department right from the beginning that the deposits in question were not a part of the stock in trade or

circulating capital of the Bank in the course of its banking business and that the same will be evident from the letter dated 11.3.1994 of the Assessing Officer and from the Assessment Order dated 30.3.1994.

18.2 Mr Joshi has also invited our attention to the relevant observations in the judgment of the Tribunal to show that the Tribunal was conscious of the need to consider whether the funds earmarked as reserves out of which the disputed investments are made, could be considered to be circulating capital or stock-in-trade of the Bank in the course of the banking business.

18.3 The fundamental question is whether the deposits on which the interest has been earned by the Bank and for which deduction is claimed under Sec.80(P), were a part of the circulating capital of the banking business or not and that merely because the Tribunal has used inappropriate language while framing the questions, this Court is not bound to answer the questions as framed by the Tribunal and that under Sec. 256(1) of the Act, this Court has ample power and discretion to reframe the questions and to consider all the relevant aspects of the question.

18.4 The question whether a particular judgment applies or not, really skirts the main issue and does not bring out the real controversy between the parties as observed even in the statement of case and order of the Tribunal and has a tremendous potential for mischief as inadvertently widening the scope of the deduction.

It is further submitted that accepting the argument of the assessee would reduce the role of the Court to that of a silent spectator, bound to proceed further even when the Tribunal or the parties have misdirected themselves, which is certainly not the role approved by the Supreme Court in 201 ITR 697.

19. Having heard the learned counsel for the parties, we find considerable substance in the argument of Mr Joshi for the Revenue that this Court is not precluded from considering all the relevant aspects of a question merely because the Tribunal had chosen to frame the question in a particular manner highlighting only one particular aspect of a question, when the question was very much before the Tribunal. If three different judgments were cited on behalf of the parties on one particular question, it would be an inelegant way of drafting the question to state "whether the case on hand is covered by the decision at X ITR, Y ITR or Z ITR".

19.1 The following extracts from the assessment order dated 30.3.1994 for the A.Y. 1991-92 vindicate the revenue's contention that it was their stand right from the beginning that the investments in question were made from the funds which did not constitute stock in trade of the Bank in the course of its banking business :-

"The assessee Co-operative Bank has filed its return income on 21.10.1991 on a total income of Rs.98,100/- alongwith statement of total income ... ...

"Actually, the purpose of examination of the case was to find out that part of the interest income earned by the assessee which does not qualify for deduction u/s.80P(2)(a)(i). Therefore, the assessee was further asked to submit the details of interest earned on the investment made under the SLR provisions and interest earned on the investment which are not covered by the SLR provisions and are made out of funds which are not related to assessee's stock-in-trade and funds out of circulating money. In response to this query, the assessee's representative submitted the break-up of figures of interest income as shown in the profit and loss account as on 31.3.1991 which is reproduced hereunder :-

Sr. No.	Break up of the nature of investment/loans/ adv. made during the period from 1.4.90 to 31.3.91	Total amount of int. received under SLR Fund	Total amt. received under non-SLR fund
1.	Advance income	36,00,68,743	
2.	Income from fixed deposit	16,42,17,479	
3.	Income from Govt. Securities	--	13,79,90,208
4.	Income from other securities	--	1,23,09,835
5.	Bills	28,64,863	--
6.	Dividend	30,92,138	--
		53,02,43,223	15,03,00,043

Further, the assessee was asked to submit the detailed break up of figures of fixed deposits placed with the Nationalized Banks and other Co-operative Banks. In response to these queries, the assessee has submitted the complete break up vide its letter dated 8.3.1994, the same is reproduced as under :-

1.	Citi Bank, Bombay	Rs. 4381	(Rs.in lacs)
2.	Dena Bank, Ahmedabad	Rs. 900	"
3.	Bank of India, Ahmedabad	Rs. 1900	"
4.	State Bank of Saurashtra, Ahmedabad	Rs. 1500	"
5.	Indian Bank, Bhadra	Rs. 1500	"
6.	Discount & Finance House of India	Rs. 500	"
		Rs. 10681	

It is also certified by the Bank authority that "we do not have any deposits with any other co-operative banks". The total interest earned from these fixed deposits during the year was Rs.16.42 crores. Please note that these deposits are kept from the surplus reserves after meeting all the obligations of maintaining SLR + CRR as per RBI guidelines and on minimum involvement fixed by NABARD."

It is pertinent to note that the above information was supplied by the Bank in response to the assessing officer's letter dated 11.3.1994 which after referring to the Madhya Pradesh High Court judgment in M.P. State Co-operative Bank Ltd. 119 ITR 327, called upon the Bank to explain :-

"The disallowance on certain portion of income which is earned by the bank is not entitled to deduction u/s.80P(2). You are asked to clarify the position regarding the claimof exemption u/s.80P(2) on the entire income as the entire income does not constitute income from banking operation to qualify for exemption. You are, therefore, called upon to explain why the income accruing or arising from the deployment of funds seggregated or unidentified as reserves operation, being not liable to be qualified as stock-in-trade or circulating capital of the company, in particular building fund, dividend equilisation fund, investment and depreciation reserve other funds and reserve including training

deposits funds as reflected in the balance sheet should not be treated as income not qualifying for exemption u/s.80P(2)(a) of the Act."

(emphasis supplied)

19.2 The Tribunal also had present to its mind the real question which had fallen for its consideration, as will be clear from the following observations in its judgment dated 3.12.1997 :-

"Various available judgments on the issue i.e. availability of exemption u/s.80P(2)(a)(i) have repeatedly emphasized and have upheld the preposition that once the circulating capital or stock-in-trade is invested by a bank in the course of its banking business in readily realizable securities, then income from such investments shall be liable to be treated as income from banking business and thus exempt u/s. 80P(2)(a)(i), but if this condition is not fully satisfied and income is earned by deployment of surplus fund on long term or short term basis, separately identified as 'Reserves' out of the appropriation of profits, the same cannot be said to be income earned by deployment of funds which are in the nature of circulating capital or stock in trade and hence the same shall not be entitled to exemption u/s.80(P)(2)(a)."

(emphasis supplied)

19.3 A Constitution Bench of the Apex Court in Commissioner of Income-tax, Bombay vs. Scindia Steal Navigation Co. Ltd., 42 ITR 589, made the following pertinent observations which have again been followed and applied by the Apex Court in Salem Co-operative Central Bank Ltd. vs. Commissioner of Income-tax, 201 ITR 697:-

"Section 66(1) (of Income-tax Act, 1922 equivalent to Sec. 256(1) of the Income-tax Act, 1961) speaks of a question of law that arises out of the order of the Tribunal. Now a question of law might be a simple one, having its impact at one point, or it may be a complex one, trenching over an area with approaches leading to different points therein. Such a question might involve more than one aspect, requiring to be tackled from different stand

points. All that section 66(1) requires is that the question of law which is referred to the Court for decision and which the Court is to decide must be the question which was in issue before the Tribunal. Where the question itself was under issue, there is no further limitation imposed by the section that the reference should be limited to those aspects of the question which had been argued before the Tribunal. It will be an over-refinement of the position to hold that each aspect of a question is itself a distinct question for the purpose of section 66(1) of the Act."

20. In view of the aforesaid material on record and the above principles enunciated by the Apex Court, we overrule the preliminary contention raised on behalf of the Co-operative Banks and reframe the questions referred to us and those raised in the Tax Appeals as under:-

(1) Whether the Tribunal was right in law in disallowing the claim of the assessee bank for deduction under Section 80P(2)(a)(i) in respect of income earned from utilization of its reserve funds being statutory reserves under Section 67(2) of the Gujarat Co-operative Societies Act, 1961 ?

(2) Whether the assess bank is entitled to claim deduction under Section 80P(2)(a)(i) in respect of income earned from utilization of its voluntary reserves other than the statutory reserves mentioned above ?

(3) Whether the Tribunal was right in law in holding that the locker rent is not deductible under section 80P(2)(a)(i) ?

21. Now we proceed to discuss the above questions.

The real question which arises for consideration is whether the deposits/securities on which the bank has earned interest and in respect of which deduction is claimed under Section 80P(2)(i) were part of the circulating capital or stock-in-trade of the banking business of the assessee bank. These investments were admittedly out of the funds which were not merely surplus as treated by the Bank itself but were also earmarked by the bank as reserves. Now the expression "reserves" is loosely used in different senses.

I BANKING RESERVES

A Bank is required to maintain certain funds separate as per the Banking Regulation Act, 1949 and allied statutory provisions (for brevity "Banking Reserves")

(i) Cash reserve at atleast 3% of the total demand and time liabilities known as Cash Reserve Ratio (CRR)
(under Section 18 read with Section 56(j) of the Banking Regulation Act)

(ii) Statutory liquidity at not less than 20% of the total of its demand and time liabilities popularly known as Statutory Liquidity Ratio (SLR)
(under Section 24 read with Section 56(q) of the Banking Regulation Act)

(iii) reserves known as NABARD reserves.
(under the National Bank for Agricultural and Rural Development Act, 1981)

The percentage of these reserves i.e. banking reserves has to be computed with respect to the demand and time liabilities of the bank i.e. deposits lying with the bank. Section 2(f) of the Banking Regulation Act defines demand liabilities as liabilities which must be met on demand and time liabilities as liabilities which is not demand liabilities.

(We are informed that all these reserves plus advances made to the borrowers are compendiously referred to as "SLR funds" in the assessment order, but to be a little accurate, we would refer to only banking reserves as "SLR Funds", and treat advances separately).

Strictly speaking these "banking reserves" are not reserves in terms of commercial accounting because reserves are appropriations of profits, the assets by which they are represented being retained to form part of the capital employed in the business (Spicer & Pegler's Book Keeping & Accounts as quoted in Metal Box Co. of India Ltd., 73 ITR 1953).

II Statutory Reserves under Co-Op. Societies Act.

Under Section 67 of the Gujarat Co-operative Societies Act, a co-operative society is required to maintain a reserve fund and is also required to carry into its reserve fund atleast one-fourth of the net profits of the society each year, subject to two exceptions with which we are not concerned. These reserves may be used for the business of the society or invested as per Sec. 71.

Under Section 71 of the Act, a co-operative society may invest or deposit its funds in a Central Bank or the State Co-operative Bank, in State of India, Postal Savings Banks and in various approved securities or any other made permitted by the Rules or by general or special order of the State Government.

III Voluntary Reserves

A Co-operative Society is also at liberty to provide for other reserves such as building reserves, investment reserve, depreciation reserve etc. - out of its net profits.

Thus, while banking reserves pertain to companies or co-operative societies carrying on banking business alone, reserves in Categoires II and III which are with reference to and out of the profits of a co-operative society do not pertain to banking business alone but they are applicable to all co-oeprative societies, even if they are not carrying on banking business.

21A. Page 166 of the of the paper book which is a part of the assessment order for A.Y. 1991-92 reflects the following income, in so far as the same is relevant here -

Advances income (Rs.36 Croes approx.)
i.e. interest on
advances to borrowers
(Rs.36,00,68,743)

Income from Fixed (Rs.16 Crores approx.)
Deposits under SLR
Funds._____
Rs.16,42,17,479

Income from Govt. (Rs.15 Crores approx.)
securities and other
securities under
non SLR Funds
Rs.15,03,00,043

22. There is no controversy whatsoever about the interest earned by the bank from its borrowers on advances made, nor about interest earned by the bank from the deposits referable to the CRR, SLR and NABARD reserves (compendiously referred to as "SLR funds" or "banking reserves"). Interest from these reserves is admittedly granted the benefit of deduction under Section 80P (2)(i).

In respect of interest from deposits referable to the later two categories of reserves, the Assessing Officer has admittedly not granted the benefit of such deduction. The Tribunal in its judgment dated 3.12.1997 read with rectification order dated 24.9.1998 held that the interest earned on deployment of statutory reserves was not deductible under Section 80P(2)(a)(i). The Tribunal did not give any decision in relation to voluntary reserves.

Hence, the controversy in the present proceedings is about the interest earned by the assessee bank on deposits made out of the amounts which are referred to as the statutory reserves under Section 67 of the Co-operative Societies Act and the voluntary reserves.

23. To recapitulate, the arguments advanced on behalf of the assessees may be summarized as under :-

23.1 As per the law laid down by the Apex Court in Bihar Co-operative Bank Ltd. 39 ITR 114, whenever the bank has surplus funds i.e. the excess of deposits over advances made by the bank, the bank like a prudent businessman is bound to invest such amounts in deposits with other banks like nationalized banks and in other securities so as to earn interest and not to keep surplus money idle and also at the same time to provide for any run on the money so that when depositors want their money back, the bank can encash such deposits or securities and repay the depositors.

The M.P. case does not make any departure from the said principle, but it was on account of the prohibitions and restrictions contained in the

provisions of the M.P. Co-op. Societies Act and the circular issued thereunder, that the Apex Court held that the statutory reserves which were in cold storage and which were beyond the domain of the cooperative bank went out of the stock-in-trade or circulating capital of the Bank.

23.2 On the other hand, the definition of working capital in section 2(24) of the Gujarat Co-operative Societies Act reads as under :-

"2(24). "working capital" means funds at the disposal of a society inclusive of paid-up share capital, funds built out of profits, and money raised by borrowing and by other means."

(emphasis supplied)

Section 67(2) of the Gujarat Act expressly provides that the reserve funds under Section 67(2) of the Act, may be used in the business of the society. It is, therefore, submitted that there is no prohibition, unlike the M.P. Act and the circular thereunder, which prohibits the bank from using the reserve funds in the business of the bank. On the contrary, there is an express permission in the Gujarat Act to use the reserve funds in the business of the bank. In Madhya Pradesh and Rajasthan, the reserve funds of a co-op. bank could be used only for the purpose of meeting with the losses of the bank or to repay the depositors at the time of winding up of the Co-operative Bank and not otherwise.

In Gujarat, for encashing the deposits the co-operative bank is not required to obtain the permission of the Registrar unless such a condition was stipulated in any order issued under Section 71(2) of the Gujarat Co-operative Societies Act.

23.3 Under the Bombay Co-operative Societies Act and the Karnataka Co-operative Societies Act also the reserve funds can be used for business of the co-operative bank and it is only for the purpose of withdrawal that permission of the Registrar is required and, therefore, in cases arising from these statutes particularly in the Karnataka State, the Apex Court has held in Bangalore Dist. Co-operative Bank's case (233 ITR 282) that when the shares are purchased from such reserve funds, the dividend received by the co-operative bank on such shares is attributable to a banking activity.

23.4 It is, therefore, vehemently submitted on behalf of the assessees that the co-operative banks in Gujarat are on a stronger footing because apart from the absence of any prohibition against use of the reserve funds in the business of the bank, there is an express permission or liberty granted to the Co-operative Society to use the reserve funds in the business of the society and there is no restriction on encashment or withdrawal.

23.5 The Tribunal has referred to certain notifications dated 12.2.1982 (27.7.1983, 16.7.1984), for the purpose of arriving at the conclusion that restrictions similar to the M.P. restrictions are applicable to the co-operative bank. The relevant portion of the said notification reads as under::-

"21. [Notification No. GHKH-37/82/CSB-1081-M -11081-S-2, dated 12.2.1982: Pub. in Guj. Govt. Gaz. Ext. Pt-IV(B), dt. 17.2.1982, p. 40-1). - In exercise of the powers conferred by clause (g) of sub-section (1) of section 71 of the Gujarat Co-operative Societies Act, 1961 (Guj. 10 of 1962), the Government of Gujarat, hereby accords permission to the co-operative Banks specified below for investment of their funds not exceeding 10% of the annual average surplus resources in deposit with the Housing Development Finance Corporation Limited, Bombay:-

(1) The Gujarat State Co-operative Bank Limited, Ahmedabad.
(2) All District Central Co-operative Banks in the State of Gujarat.
(3) All Urban Co-operative Banks in the State of Gujarat.

2. The surplus resources of the Co-operative Banks would mean funds which are not required by the Bank for their business operations and for maintaining liquidity of resources.

3. The above Banks shall make appropriate provision in their bye-laws for such investment.

4. Whenever an investment of surplus funds is sought to be made by a Co-operative Bank the specific prior approval of a Registrar or the District Registrar, as the case may be, shall be taken.

5. The Banks shall submit to the Registrar of Co-operative Societies, a quarterly statement showing information of their surplus resources in a proforma as may be prescribed by the Registrar of co-operative Societies, in this behalf."

(emphasis supplied by the Court)

Similar notifications are issued permitting the above three categories of banks to deposit their surplus resources with other institutions like Gujarat State Co-operative Marketing Federation, Gujarat State Co-operative Consumers Federation, Gujarat State Co-operative Cotton Marketing Federation and Gujarat State Oil Seeds Growers Federation.

The learned counsel for the assessee submits that the deposits in question are not made with any of the above named institutions most of which are themselves co-operative societies.

Even otherwise interest earned on deposits with co-operative societies is exempt under Section 80P(2)(d) of the Act and, therefore, it is submitted that these notifications have no relevance.

24. Although the notifications may not be of relevance in the sense that (as per the case of the assessee bank) the amounts are not deposited with the Housing Development & Finance Corporation or similar other institutions covered by notifications dated dated 12.10.1992, clause 2 of the notification clearly provides that the surplus funds of the bank would mean funds which are not required by the bank for their "business operations" and for "maintaining liquidity of resources" meaning thereby the funds are not required for the business of lending and for maintaining liquidity of resources. The State Co-operative Societies Acts do not provide for such liquidity ratios. It is the Banking Regulation Act which lays down such liquidity ratios through presumption of CRR and SLR and under the NABARD Act also such ratio is prescribed. In other words, the funds in excess of the banking resources required to be maintained under the Banking Regulation Act and allied law such as NABARD Act (which are applicable only to banking companies and co-operative banks) are the excess surplus funds of the co-operative banks which may be invested by the bank as

per provisions of section 71(1) of the Act and the notifications issued under Section 71(2) of the Gujarat Co-operative Societies Act outside the activity of banking.

25. Hence, even while holding that in so far as the provisions pertain to use of the reserve funds by a co-operative society for its business purpose, the restrictions and prohibitions applicable to the co-operative societies under the M.P. Act and the circular issued thereunder are not applicable to the co-operative societies under the Gujarat Act, the provisions of Section 67(2) of the Gujarat Act, Rule 30 of the Gujarat Co-op. Societies Rules and the notifications dated 12.10.1992 themselves proceed on the basis that the activity of parking its "surplus funds" by a co-operative bank is outside its "business operations". The absence of prohibitions and restrictions under the Gujarat Act, unlike the M.P. Act, does not, therefore, obliterate the distinction between the banking activity and the non-banking activities of a co-operative bank. So also the definition of "working capital" in the Gujarat Act for the co-operative societies in general as including "funds built out of profits" does not and cannot do away with the difference in the nature of different activities of a co-operative bank which together constitute the business of the bank. We must, therefore, turn to the consideration of the scope of the banking activity, the income from which alone is deductible from total income of a co-operative bank under section80P(a)(ii).

26. This leads us to the discussion on merits about interpretation of the provisions of Section 80P(2)(i) of the Income Tact Act, 1961.

26.1 Under the Income Tax Act 1961 the relevant provision was contained in Section 81 and the same read as under :-

"81. Income of co-operative societies :
Income-tax shall not be payable by a co-operative society -

(i) In respect of the profits and gains of business carried on by it, if it is -

(a) a society engaged in carrying on the

business of banking or providing credit facilities to its members;

(b) to (f) ....

Provided that, in the case of a co-operative society which is also engaged in activities other than those mentioned in this clause, nothing contained herein shall apply to that part of its profits and gains as is attributable to such activities and as exceeds fifteen thousand rupees;

(ii) ... .

(iii) in respect of any interest and dividends derived from its investments with any other co-operative society;"

26.2 Section 80P as now applicable reads as under :-

"80P. Deduction in respect of income of co-operative societies.- (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely :-

(a) in the case of a co-operative society engaged in -

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) to (vii) ... ...

The whole of the amount of profits and gains of business attributable to any one or more of such activities;

xxx xxx xxx xxxx xxxx

(c) in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as does not exceed, -

(i) where such co-operative society is a consumers' co-operative society, one hundred thousand rupees; and

(ii) in any other case, twenty thousand rupees.

Explanation :- In this clause, "consumers' co-operative society" means a society for the benefit of the consumers.

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;

(e) in respect of any income derived by the cooperative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;

(f) in the case of a co-operative society, not being a housing society or an urban consumers' society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed twenty thousand rupees, the amount of any income by way of interest on securities or any income from house property chargeable under section 22.

26.3 It is strenuously urged on behalf of the Co-operative banks that language of section 80P(2)(a)(i) the aforesaid provisions is wider than the language of Section 81 which came to be interpreted by the Supreme Court in the M.P. Co-operative Bank Case (218 ITR 438).

It is submitted on behalf the co-operative banks that old section 81 granted exemption in respect of the profits and gains of the business of banking where as now the benefit being granted to the co-operative banks is deduction of the entire income which is attributable to banking business. It is submitted that the words "attributable to" are much wider as held by the Apex Court in Cambay Electricity Supply, 113 ITR 84 and Vellore Electricity, 227 ITR 557. On the strength of the said judgments, it is contended that the expression "attributable to" includes all activities ancillary/incidental to or connected with banking and that, therefore, parking of its surplus funds by a co-operative bank (or any bank for that matter) in short term deposits or in Government securities is as much a part of banking business as advancing loans is. In support of the said contention, strong reliance is placed on the decisions of the Supreme Court in various cases of State/District Co-operative Banks of Bihar, Bombay, Ahmedabad and Bangalore.

27 A perusal of the various statutory provisions indicates that the Legislature has always been conscious of the fact that a co-operative society carrying on the business of banking may be involved in banking activities as well as non-banking activities. While the deduction is unlimited for income attributable to banking activities (Sec. 80P(2)(a)), the deductible income is limited to Rs.20000/- in respect of non banking activities (Sec. 80P(2)(c)) (Rs.15000/- under old Sec. 81(i) and under section 14(3)(i) of 1922 Act.) unless -

(i) such activity happens to be making investments with any other co-operative society in which case again the deduction would be unlimited (Sec. 80P(2)(d), old Sec. 81(iii), Sec. 14(3)(iii) of 1922 Act) or

(ii) gross income of such co-operative bank is Rs.20,000/- (Sec. 80P(2)(e)

The legislature has thus very consciously provided unlimited deduction for the income attributable only to banking activities as such and not made it available for each and every activity of a co-operative bank. We must, therefore, turn to the interpretation of the expression "banking activity".

28. Since the Income Tax Act does not contain any definition of "the business of banking" or "banking

activity", the learned counsel for the co-operative banks have heavily relied on the definition of "banking" under section 5(b) of the Act which reads as under :-

"banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise"

It is submitted that even if the deposits of surplus funds with nationalized banks are treated as investments, they would form part of the banking business and even banking activity.

However, on a closer analysis it appears that the definition is much narrower than even what the revenue contends. As per this definition - banking means -

(i) acceptance (by bank) of deposits of money from the public.

AND

(ii) withdrawal (by depositors) by cheque, draft, order or otherwise.

The extreme narrowness of this definition becomes apparent from the provisions of Section 6 which enumerates the forms of business in which a banking company may engage "in addition to the business of banking". The relevant portion of Section 6 reads as under :-

"6. Forms of business in which banking companies may engage - (1) In addition to the business of banking, a banking company may engage in any one or more of the following forms of business, namely -

(a) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, ...otherwise; the providing of safe deposit vaults; the collecting and

transmitting of money and securities;"

(emphasis supplied)

As per this statutory provision, even lending or advancing of money does not amount to the business of banking, but for the purposes of Section 80P(2)(a)(i) we are not inclined to accept this definition which is too narrow.

29. At this juncture, we would like to refer to the definition of bank in the Webster's New 20th Century Dictionary

"bank

1. an establishment for the deposit, custody and issue of money, for making loans and discounts, and for making easier the exchange of funds by cheques, notes etc. banks make profit by lending money at interest.

2. a company or association carrying on such a business

bank - to deposit (money) in a bank

bank - to engage in banking, to operate or manage a bank"

The expression "Banker" (and consequently banking business) is explained in the Halsbury's Laws of England (4th Edition, Vol. 3 - Para 38) in the following words :-

"A `banker' is an individual, partnership or corporation, whose sole or predominating business is banking, that is the receipt of money on current or deposit account and the payment of cheques drawn by and the collection of cheques paid in by a customer.

The characteristics usually found in bankers are (1) that they accept money from, and collect cheques for, their customers and place them to their credit; (2) that they honour cheques or orders drawn on them by their customers when presented for payment and debit their customers accordingly; and (3) that they keep current accounts in their books in which

the credits and debits are entered."

30. The Apex Court has also pointed out in the M.P. Case (218 ITR 438) what is meant by a normal banking activity.

30.1 "The normal banking activity is to receive deposits and utilize such deposits by advancing loans etc. to borrowers. Since the rate at which interest is paid to depositors is lower than the rate charged from borrowers, the difference in the rates generates income for the banks."

30.2 In the above decision, the banking business has been held to be a much wider term whereas banking activity has been held to be a narrower term. This is clear from the following paragraph :-

"Before we part, we must take note of Shri Salve's contention that the proviso to section 81 would apply in the case of that co-operative society alone which is engaged in an activity other than those mentioned in clauses (a) to (f) which not being so as regards the appellants, the proviso has no application; and so, no part of its profit or gain can attract income-tax. We do not think this to be the correct reading of the proviso, notwithstanding the use of the word "also". According to us, what the proviso seeks to convey is that even if a co-operative society is engaged only in the business of banking, but part of its activity is not attributable to engagement in such activity, income derived from that part of activity would become taxable."

It is thus clear from the above decision that the Apex Court has drawn a distinction between the business of banking (which is the only business of a co-operative bank) and banking activity which is one of the business activities of such a bank.

30.3 In other words, the business of banking may comprise of various activities of which the activity of banking properly so called in the present context is only one i.e. to take deposits from the people and then to advance loans out of those deposits to the borrowers. The controversy is when there are surplus funds, such funds may be invested or to use a neutral word "parked" or "deposited" with another bank i.e. a nationalized

bank in short term or long term deposits or in Government securities or other securities. When such deposits are made from funds which are not merely surplus in the sense of excess of deposits over advances, but which are also treated by the assessee Bank itself as "reserves" meaning thereby the funds are earmarked for other activities like constructing building etc. (though the bank may continue to use such funds as circulating capital), it can safely be said that deposit of such funds with another bank or another institution cannot be treated as "a banking activity" properly so called.

31. Now we proceed to explain why the expression "income attributable to banking activity" is to be confined to income arising on deposits of "banking reserves" only and not on deposits of other surplus funds of the bank like statutory reserves under Section 67 of the Act and the voluntary reserves.

31.1 In the M.P. case (218 ITR 438) the Apex Court observed that "The banks may have to maintain certain reserves to meet with emergencies e.g. spurt in withdrawals by depositors for diverse reasons. Investmenets which permit withdrawals at short notice would, therefore, be a part of the requirement of banking business and interest accruing on such investmenets would be outside the tax net."

31.2 It is obvious that the "reserves" referred to above are "the banking reserves" as explained in para 21 above. The Apex Court did not refer to the activity of parking such reserves as a banking acitivity, but referred to it as a part of the banking business. In our view, in the context of the present controversy it is only the income arising on deposits of "banking reserves" with other banks/institutions which can be treated as income attributable to a banking activity. The following extracts from the Statement of Objects and Reasons for the Banking Regulation (Amendment) Act (Act 23 of 1960) (AIR Manual, 5th Edition Vol. 2 Pages 588 and 620) bear out our conclusion :-

"As credit institutions dealing primarily with depositor's monies, banks have to make certain special provisions against emergencies or unforeseen contingencies as a matter of financial prudence.

... .

This clause (sec. 24) is an attempt to prescribe by law what has already been recognised as sound banking practice, namely, that a bank should keep a reserve of cash and liquid assets to meet its demand liabilities. One of the worst defects of Indian banking is the propensity of the smaller banks to overtrade at the expense of liquidity and it seems best to insist on all banks maintaining a reasonably large proportion of their cover in the form of cash or trustee securities as defined in the Indian Trusts Act, excluding immovable property. The proprotion of the 20 per cent is in accordance with the actual practice followed by smaller banks."

31.3 Now this kind of short term deposits from surplus funds for the purpose of meeting with emergencies may be attributable to the banking activity properly so called and that would also be covered by the relevant provisions of the Banking Regulation Act providing for the Cash Reserve Ratio (3% under Sections 18 and 56 of the Banking Regulation Act) and Statutory Liquidity Ratio (20% under Section 24 and Section 56 of the Banking Regulation Act) because compliance with the aforesaid statutory provisions is a part of the mandatory conditions fulfillment of which is necessary for the continuance of the business of banking.

31.4 In our view, since the Banking Regulation Act is a special Act, we are of the view that only those funds which are required to be kept as surplus by the bank in accordance with the relevant provisions of the Banking Regulation Act and the allied Act being NABARD Act requiring the bank to keep a certain percentage of its deposits as surplus can be taken into account while accepting the bank's contention that parking of its surplus funds by depositing the same with nationalized banks in government securities/other securities is a part of its banking business or is attributable to the banking activity.

31.5 Even the provisions of Sec. 2(24) and Sec. 67 of the Gujarat Co-operative Societies Act far from advancing the assessee's case, suport the above construction of the experession "banking activity". Sec. 2(24) provides that the working capital means funds at the disposal of a society which include funds built out of profits. That does not mean that all the profits of a co-operative bank are necessarily

attributable to the banking activity. Sec. 67 requires at lease one-fourth of the net profits of a co-operative society to be carried to its reserve fund (which any co-operative society carrying on profit making activity is obliged to maintain). This very section permits such reserve fund to be used "in the business of the society" or to be "invested" (subject to the provisions of Section 71 of the Act) with State Bank and other approved institutions and in approved securities. The Co-Operative Societies Act also, therefore, proceeds on the footing that when a co-operative bank parks a part of its net profits (which are otherwise lying idle) by investing them with specified institutions like State Bank of India or in approved securities, such activity is not a part of its banking business. Any doubt on this score is completely removed by the notifications dated 18.12.1982 issued under section 71(2) of the Act and also by Rule 30 of the Gujarat Co-operative Societies Rules. The said notifications quoted in para 23.5 above permit co-operative banks to invest their statutory reserves under Sec. 67 of the Act after stipulating that -

> "the surplus reserves of the co-operative banks would mean funds which are not required by the bank for their business operations or for maintaining liquidity of resources".

Maintaining liquidity of resources would obviously refer to banking reserves as discussed in para 21 hereinabove.

31.6 Section 67 of the Gujarat Act thus permits the co-operative bank to use the reserve funds in the business of the society (i.e. banking business in the narrower sense) or may subject to the provisions of Section 71 be invested. Similarly, the State Government while permitting investment of funds as per Rule 29, imposes certain ceiling on such investments and then provides that no investment shall be made if it is likely to affect the "ordinary business of the bank". A perusal of the statutory provisions of Section 67 of the Gujarat Co-op. Societies Act and Rule 30 of the Gujarat Co-Op. Societies Rules clearly recognize the distinction between the banking activity of a co-operative society and non-banking activity of a co-operative society. The investment of reserve funds permitted by section 67(2) read with Section 71 of the Act as well as Rule 30 of the Gujarat Co-Op. Societies Rules clearly recognizes that depositing of such reserve

funds would fall outside the business of banking.

The very fact that the State legislature permits the surplus funds not required for its business to be invested in government securities approved under section 71 of the Act indicates that investments of such securities even if referred to as parking of surplus funds is outside the normal business of the bank and is not attributable to the banking activity properly so called.

31.7 It is true that the learned counsel for the co-operative banks have placed strong reliance on the decisions of the Apex Court explaining the scope of expression "reserves" particularly in 73 ITR 53 and 132 ITR 559. It is submitted that as per the accounting principles which are recognized in the aforesaid two decisions, funds created out of the reserves form part of working capital. Even proceeding on that basis, the question which really falls for determination is whether parking of funds which are surplus after giving advances to the borrowers and after making provisions for run on the money as per the statutory requirements for CRR & SLR under the Banking Regulation Act and the allied laws regarding banking such as NABARD Act, whether such activity of parking the other surplus funds is attributable to "the banking activity" properly so called.

32. In view of the discussion hereinabove and the analysis of the case law hereinafter, we hold that parking of such surplus funds in excess of banking reserves cannot be considered to be "a banking activity" or attributable to banking activity, though it may be a part of the "business of banking" in the wider sense.

33. It is true that the learned counsel for the co-operative banks have heavily relied on the decisions of the Apex Court in Bihar State Co-op. Bank Ltd., 39 ITR 114, Bombay State Co-Op. Bank Ltd., 70 ITR 86 and the decision of this Court in Addl. CIT vs. Ahmedabad District Co-op. Bank Ltd., 101 ITR 733.

34. Before appreciating the principle laid down in the said cases, it is necessary to refer to the case law on the subject from the beginning.

34.1 A Special Bench of three learned Judges of the Madras High Court made the following observations in Madras Central Urban Bank Ltd. vs. Commissioner of

Income-tax, 52 ILR 640:-

"It seems to me impossible, at least without a great deal more information than has been presented to us, to say that these investments of more or less amounts for a longer or shorter time on the part of the Bank in order to prevent their fluid assets from lying absolutely idle in their coffers, formed part of the business of the Bank. It seems to me that they are in the same position as any private person who with a large credit balance in his private account desires to put it into a remunerative form which shall at the same time be readily realizable and therefore invests for shorter or longer periods in Government paper.

It, therefore seems to me from the best consideration that I can give to the matter that this investment of these fluid assets of the Bank cannot be held to be part of the business of the Bank in accordance with the decisions quoted from the Scotish and English cases which seem to me to be all distinguishable and to be clearly assignable to an operation in furtherance of the particular business of the firm or company concerned. The obligation on the Bank to keep 40 per cent of its total liabilities in a fluid form is in consequence of an administrative order of Government and does not oblige them, although it may permit them, to invest the fund at all, and it seems to me that as they are to hold the fund in readiness to meet some particular liability which is specified, it cannot be said to be part of their business as a Bank to invest these liquid assets in the interval."

34.2 In Madras Provincial Co-operative Bank Ltd. vs. CIT, 1 ITR 158, a Bench of three learned Judges of the Madras High Court dealt with a similar question and Bardswell, J. observed as under :-

"I agree that the interest derived by a Co-operative Bank from its investments in Government securities is not to be regarded as part of the profits of its business qua such Bank. I would take it that the exemption is

meant as an encouragement to the employing of as much capital as possible for the financing of co-operative societies and so extending the scope of co-operation. The investing of money in Government securities does not further the cause of co-operation but is only a means of keeping from lying idle funds that cannot immediately be used for such a purpose."

(emphasis supplied)

34.3 In CIT vs. Madras Provincial Co-Op. Bank Ltd., 10 ITR 490, a Division Bench of the Madras High Court held that the interest received by a co-operative bank on debentures issued by the Madras Co-operative Central Land Mortgage Bank which the assessee had purchased in the open market represented interest on an investment and were taxable income. It was specifically observed that the fact that the assessee went into the market to purchase these securities shows that the object was investment and, therefore, it was not treated as a part of the banking activity.

35. Discussion on case law.

35.1 A perusal of the aforesaid decisions indicates that initially the Courts considered that depositing surplus money by a co-operative bank with any other bank or into any security was to be treated on the same footing as any private person having a large credit balance in his private account depositing/investing it elsewhere. The Courts even went to the length of laying down that the legal obligation on the bank under an administrative order to keep a certain percentage of its total liabilities in a fluid form did not make it a part of their business as a bank. It is in this context that we have to read the subsequent decisions.

35.2 In Bihar State Co-op. Bank Ltd., the Supreme Court observed that the decisions in Madras Central Urban Bank Ltd. case (1929) ILR 52 Mad. 640 Full Bench and Madras Provincial Co-op. Bank Ltd. case (1933) I ITR 158 were before the amendment of the notification. Before the amendment, the income which was exempted was profit from business and not income from sources which fell under Sections 8 and 9 of the 1922 Act. CIT vs Madras Provincial Co-op Bank Ltd. (1942) 10 ITR 490 was held to be a case where moneys had been invested in debentures and the interest derived therefrom was not profits from the business. The Apex Court then made the following observations :-

"In the instant case the co-operative society (the appellant) is a bank. One of its objects is to carry on the general business of banking. Like other banks money is its stock-in-trade or circulating capital and its normal business is to deal in money and credit. It cannot be said that the business of such a bank consists only in receiving deposits and lending money to its members or such other societies as are mentioned in the objects and that when it lays out its moneys so that they may be readily available to meet the demand of its depositors if and when they arise, it is not a legitimate mode of carrying on its banking business."

For arriving at this conclusion, the Apex Court relied on the observations of the Privy Council in Punjab Co-operative Bank Ltd. vs. CIT, (1940) 8 ITR 635 where the Privy Council observed that in the ordinary cases the business of a bank essentially consists of dealing with money and credit. Depositors put their money in the bank at a small rate of interest and in order to meet their demands if and when they arise the bank has always to keep sufficient cash or easily realisable securities. That is a normal step in the carrying on of the banking business. In other words "that is an act done in what is truly the carrying on or carrying out of a business".

35.3 Even after basing its decision on the aforesaid observations of the Privy Council, the Apex Court dealt with the argument of surplus funds in the following terms :-

"Stress was laid on the use of the word "surplus" both by the Tribunal as well as by the High Court and it was also contended before us that in the bye-laws under the heading "business of the bank" it was provided that the bank could "invest surplus funds when not required for the business of the bank in one or more ways specified in section 19 of the Bihar Act (clause 4 III(i) of the bye-laws). Whether funds invested as provided in section 19 of the Bihar Act would be surplus or not does not arise for decision in this case, but it has not been shown that the moneys which were in deposit with other banks were "surplus" within that bye-laws so as

to take it out of banking business."

35.4 The principle laid down in Bihar State Co-op. Bank case (supra) (-a co-operative bank lays out its moneys so that they may be readily available to meet the demands of its depositors if and when they arise is a legitimate mode of carrying on its business) - was followed by the Apex Court in several other decisions in CIT vs/ Bombay State Co-Op. Bank (1968) 70 ITR 86 and also by this Court in Addl. CIT vs. Ahmedabad Dist. Co-op Bank Ltd. 101 ITR 733.

35.5 The said leading case of Bihar State Co-Op. Bank (Supra) has been explained by the Apex Court in M.P. State Co-Op. Bank Ltd. (Supra), in the following terms:-

"The bank may have to maintain certain reserves to meet with emergencies, e.g. a spurt in withdrawals by depositors for diverse reasons. Investments which permit withdrawals at short notice would, therefore, be a part of the requirement of banking business and interest accruing on such investments would be outside the tax net. That is why this court in Bihar State Co-operative bank Ltd. vs. CIT (1960) 39 ITR 114, while dealing with income derived by way of interest on short-term deposits by the bank, held that it was income from normal banking business and was, therefore, exempt from the liability to pay income-tax."

(emphasis supplied)

35.6 We are of the view that while all the aforesaid decisions cited on behalf of the co-operative banks had accepted the claim of the co-operative banks for deduction of income arising from deposit of surplus funds, that claim was accepted on the ground that the banks are required to keep certain funds readily available to meet with emergencies like the run on the money. But there is nothing in the above decisions to indicate that interest earned on deposits of all surplus funds per se is deductible as income from banking activity. In our opinion, when the Parliament has in its wisdom provided the Cash Reserve Ratio and the Statutory Liquidity Ratio under the Banking Regulation Act and under the National Bank of Agriculture & Rural Development Act, 1981 as sufficient for meeting with emergencies like the run or the money, we do not see any

justification for extending the scope of deduction to income on surplus funds in excess of the banking reserves or SLR Funds (as explained by us in para 21 above).

35.7 The argument that all the surplus funds lying with the bank are deposits which are not utilized for advancing loans and are to be treated similarly merely explains the source of such surplus funds, but the distinction between the two sets of suplus funds is that in case of banking reserves (or SLR funds) they cannot be advanced in view of statutory prohibitions under the Banking Regulation Act applicable to all banks and co-op. banks and are, therefore, required to be parked in interest earning deposits/securities whereas in case of non SLR funds, the Bank does not find borrowers and, therefore, such funds are invested to earn interest. It does not mean that parking the excess surplus funds is a part of its banking business or to be precise, a part of its banking activity properly so called. The business must have a direct or proximate connection with or nexus to the earnings in order to attract the provisions of Section 80P(2)(a)(i). The very fact that the legislature has imposed a ceiling of Rs.20,000 for the purpose of deduction by a co-operative society not doing the banking business or other specified categories of activities shows that the legislature was not in favour of granting exemption or deduction in favour of any business activity of a co-operative society per se.

36. It is true that the decision in CIT vs. Bangalore Dist. Co-op. Central Bank Ltd. may prima facie appear to be in favour of the assessee bank. There the investment was made out of the reserve fund. The Apex Court noted that the finding of the Tribunal that the interest income is attributable to the business of the assessee bank was not challenged on factual basis by the Revenue and that no materials were placed before the Apex Court to upset the factual conclusion of the Tribunal. The decision in M.P. Co-Op. Bank case (218 ITR 438) was distinguished on the ground that "the (said) decision was rendered on the facts of that case and it is not applicable in the present case in view of the finding of the Tribunal that the income in question is attributable to the business of the assessee."

When the learned counsel for the asseee invited the attention of the Court to the provisions of the Karnataka Co-Op. Societies Act and Rules and the decisions in Bihar State Co.op. Bank (39 ITR 114) and Cambay Electric (113 ITR 184), the Apex Court observed

that it was unnecessary in that case to consider the same in detail.

As per the settled legal position, a decision is an authority for what it actually decides and not necessarily for what logically follows from it. Equally well settled is the principle that a decision to be law under Art. 141 must not be a mre conclusion by which the case is disposed of. Because, a conclusion, mere conclusion, may be on facts, it may not and does not necessarily involve consideration of law. It is well settled that Art. 141 will not be attracted if law is not declared or stated vocally to support the conclusion reached for deciding the lis. A mute declaration of the mere conclusion is not contemplated under Art. 141. (vide Manager, Panjarapole, Deodar vs. C.M. Nat, 1997(2) GLR 1321 1325)). The contentions raised by the revenue in the present case particularly that the income in question was not attributable to a banking activity was never raised before the Apex Court as the Tribunal's finding against the revenue was not challenged in the Bangalore case.

37. The contention of Mr Joshi for the revenue (para 16.2 II) that the investments made as authorised under bye-laws of the assessee bank which permits investment of only surplus funds (meaning funds not required for the business of banking) has not been disputed on behalf of the assessee bank and, therefore, the case goes out of the ratio of the Bihar State Co-op. Bank (Supra) and all the subsequent decisions.

38. In view of the above discussion, it is obvious that the income earned by a co-operative bank on deposits of its non SLR funds (i.e. funds other than those advanced as loans and the banking reserves as explained in para 21 above) is not deductible under Section 80P(2)(a)(i). This conclusion holds goods even in respect of the funds represented as statutory reserves under Section 67 of the Gujarat Co-operative Societies Act, 1961.

39. Coming to the tax reference at the instance of the revenue, we have no doubt in holding that the interest earned on the deposits on such non statutory or voluntary reserves like building reserves, investment reserves, depreciation reserves, dividend equilization reserves, etc. cannot be considered to be profits and gains of banking activity or profits and gains attributable to any banking activity properly so called. The reasoning which has commended to us for holding that

the interest earned on statutory reserves under Section 67(1) of the Gujarat Co-operative Societies Act cannot be said to be profits and gains of banking activity applies with much greater force to the voluntary reserves.

40. It is also required to be noted that while calculating deduction under Section 80P(2)(a)(i), the principle laid down by this Court in Gandevi Taluka Khedut Sahakari Sangh Ltd. vs. CIT, (1994) 207 ITR 175 will have to be applied. The following principle, though enunciated in the context of the provisions of Section 80P(2)(a)(iv), is also applicable while considering the provisions of Section 80P(2)(a)(i) :-

> "While granting deduction under section 80P(2)(a)(iv), only the net income attributable to the activities under section 80(2)(a)(iv) of the Act for the purchase of agricultural implements, livestock, etc. intended for supplying to agriculturists which was included in the gross total income could be deducted and not the gross total income from such activities."

In other words, when the profits and gains of a business include income from taxable activities as well as income from non-taxable activities, separation of these two components which have entered into the total income can only be done by finding out the proportionate net income, that is, after deducting from the amount of gross profits both for taxable activities as well as for non-taxable activities all expenditure attributable to these two different categories of activities. Hence, the income in respect of non-taxable activities, which is to get the benefit of deduction under Section 80P(2)(a)(i) is to be ascertained by setting off against the gross profits of non-taxable activities the proportionate amount of expenditure in respect of non-taxable activities.

41. It is also clarified that this decision is confined to the assessee Bank's claim for deduction under section 80P(2)(a)(i) and does not at all deal with its claim, if any, in respect of deduction of interest arising from deposits with other co-operative Banks under section 80P(2)(d) of the Act.

LOCKER RENT

42. Coming to the next question about the locker rent, the learned counsel for the cooperative societies have submitted that running safe deposit vault is very much a part of the banking business and that even the provisions of Section 6 of the Bombay Regulation Act provide that running a safe deposit vault is incidental to banking business and, therefore, it will certainly fall within an activity which is attributable to banking business. In support of the said contention, reliance is placed on the decision in Bhopal Co-operative Central Bank Ltd., 172 ITR 423 (M.P) and Dhar Central Co-operative Bank, 149 ITR 438.

43. On the other hand, Mr Joshi learned counsel for the Revenue has submitted that the Tribunal has rightly relied on the decision of the M.P. High Court in 169 ITR 373 and in 225 ITR 421.

44. In view of the above discussion on the major controversy, wherein we have already held that what is deductible is profits and gains from or attributable to banking activity in the narrower sense of the term, obviously running a safe deposit vault is not a banking activity or an activity attributable to the banking activity properly so called. The provisions of Sec. 6 of the Banking Regulation Act, 1949 (relevant part already extracted in para 28 above) also clearly shows that the said business is considered to be in addition to the business of banking.

Even if we were to accept the wider meaning of the expression "banking activity" as canvassed by the learned counsel for the co-operative banks in the earlier part of this judgment, in our view running a safe deposit vault cannot be said to be a part of the banking activity in the wider sense of the term nor can it be said to be an activity attributable to banking business. We prefer to follow the view of the M.P. High Court in Bhopal Co-op. Central Bank vs. CIT, 169 ITR 573 and in CIT vs. Jilla Sahakari Kendriya bank, 225 ITR 421. The rent on lockers cannot be treated as profits and gains attributable to banking activity.

45. In view of the above discussion, we answer the questions as reframed and set out in para 20 of this judgment as under :-

Question No. 1 is answered in the affirmative

i.e. in favour of the revenue and against the assessee.

Question No. 2 is answered in the negative i.e. in favour of the revenue and against the assessee.

Question No. 3 is answered in the affirmative i.e. in favour of the revenue and against the assessee.

46. Tax References as well as tax appeals stand disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(M.S. Shah, J.)

29.11.2000

At this stage, Mr KH Kaji, learned counsel for the assessee prays for certificate under Section 261 of the Act for appeal to the Supreme Court.

Since this case involves important questions of law of general importance for all the co-operative banks in India, we certify under Section 261 of the Act that this is a fit case for appeal to the Supreme Court.

(A.R. Dave, J.)

(M.S. Shah, J.)

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